IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
Davis PJ, Fort Hood, and Servitto JJ

In re LENA ANNE BECK and AVERY JOEL BECK,
Minors.

DEPARTMENT OF HUMAN SERVICES,
Petitioner-Appellee,

v

LAWRENCE MICHAEL BECK,
Respondent-Appellant.

SC: 140842

COA: 293138

Trial Court: 07-733751-NA

AMICUS CURIAE BRIEF
Submitted by the Family Law Section of the State Bar of Michigan

Family Law Section of the State Bar of Michigan
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This brief reflects the position of the majority of the Family Law Section of the State Bar of Michigan, taken in accordance with its bylaws regarding the following identified matters. The position taken does not necessarily represent the policy position of the State Bar of Michigan. These matters are within the jurisdiction of the Family Law Section.

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MICHIGAN CHILD SUPPORT FORMULA PROVISIONS

STATEMENT OF QUESTIONS PRESENTED

I. Does the Termination of Parental Rights Automatically and Necessarily Terminate That Parent's Child Support Obligation?

The Court of Appeals answered "No."

The Trial Court answered "No."

Respondent-Appellant contends the answer is "Yes".

Petitioner-Appellee contends the answer is "No."

Amicus Curiae Family Law Section contends the answer is "No."

STATEMENT OF INTEREST OF AMICUS CURIAE STATE BAR OF MICHIGAN'S FAMILY LAW SECTION

The Family Law Section of the State Bar of Michigan is a voluntary association of 2,481 family law practitioners. The Section works to achieve a domestic relations system that does not increase the distress to families, and that ensures the well-being of children. The Section seeks to avoid the impoverishment of children who are the victims of abuse and neglect, and to avoid encouraging parents to abuse and neglect their children as a means of avoiding child support.

STATEMENT OF FACTS

The Respondent-Appellant in this case is divorced from the children's mother, who retained custody after respondent's parental rights were terminated in a child protective proceeding. The trial court ruled that respondent's child support obligation in the divorce case continued despite the termination of his parental rights. Respondent appealed, arguing that his due process rights were violated. The Court of Appeals affirmed the trial court, finding no basis for the respondent's due process claim, and finding no grounds to discontinue child support in any statute or public policy.

On May 28, 2010, this Court granted leave to appeal, inviting amicus briefs from the Children's Law Section, the Family Law Section and the Friend of the Court Association :

"On order of the Court, the application for leave to appeal the March 4, 2010 judgment of the Court of Appeals is considered, and it is GRANTED. The parties shall address whether a parent whose rights to his children have been involuntarily terminated in a child protective proceeding under the Juvenile Code can nonetheless be ordered to pay child support for those children.

The motion for leave to file brief amicus curiae is GRANTED. The Children's Law Section and Family Law Section of the State Bar of Michigan and the Friend of the Court Association are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issue presented in this case may move the Court for permission to file briefs amicus curiae."

I. THE TERMINATION OF PARENTAL RIGHT DOES NOT TERMINATE A PARENT'S CHILD SUPPORT OBLIGATIONS.

STANDARD OF REVIEW

This is a question of law which should be reviewed de novo. *Harvey v Harvey*, 470 Mich 186, 191, 680 NW2d 835 (2004).

ARGUMENT

The Court of Appeals was correct in finding no basis in law or public policy to terminate child support responsibilities upon the termination of parental rights.

There is no statutory basis for terminating the Respondent's child support. The Court of Appeals opinion does not hinge on any particular factual finding. The respondent was a divorced father, and his parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). (That statute has been amended by 2010 PA 7 (HB 4035), which will take effect on September 4, 2010, but the amendments don't deal with the child support issue.) In the order terminating his parental rights, the judge specifically ruled that the father's child support and other support for the children would continue. The trial court did not order child support, it simply noted that it was not terminating the child support order already in existence. The Court of Appeals affirmed this ruling, *Department of Human Servs v Beck (In re Beck)*, COA 293138, March 4, 2010.

Unless there is statutory authority to terminate child support upon terminating parental rights, the Court has no authority to do so. The child support order in this case was entered in the parties' divorce action. The family court has authority to enter child support orders in divorce cases under MCL 552.15. This child support order, properly

entered, should remain in effect unless there is authority to terminate that order. The trial court did not need to find statutory authority to continue the existing child support order. It would only have needed to find statutory authority if it decided to terminate the child support order. The Court of Appeals found no statute authorizing such termination, and held that the trial court did not have the authority to terminate the existing child support order in the divorce action.

In re Beck is an extension of the holding in *Evink v Evink*, 214 Mich App 172 (1995). *Evink* involved a voluntary termination of parental rights. *Evink* found no statutory authorization for terminating child support upon the voluntary termination of parental rights. *Evink* distinguished voluntary terminations that were part of an adoption process, and noted that it was the adoption, in which a new parent took over parental obligations, that terminated the natural parent's parental obligations. Although *Evink* involved a voluntary termination there was nothing in the rationale of the opinion that limited the holding to voluntary terminations. The *Beck* court also viewed the issue as primarily a matter of statutory interpretation, and could find no statutory authorization or implication that support should be terminated along with parental rights.

There is no constitutional basis for requiring parental rights as a prerequisite to child support. Neither *Beck* nor *Evink* found any authority making parental rights a prerequisite for child support. No Michigan or federal case holds that either the Michigan Constitution or the United States Constitution requires the termination of child support when parental rights are terminated. In addition, Michigan statutes frequently separate parental rights from parental obligations.

Michigan statutes allow the separation of parental rights and child support.

Michigan law separates parental rights from parental responsibilities. For example, MCL 552.605b allows the court to order child support for a child until the age of 19 and a half, although the court has no jurisdiction to order custody or parenting time of a child after their 18th birthday, MCL 722.22(d). If parental rights were a constitutional requirement for support obligations, then this statute allowing post-minority support would be unconstitutional.

The child custody act allows non-parents to assert parental rights to a child, yet there is no corresponding duty of support. MCL 722.27b provides that the court may grant grandparents specific rights of access to their grandchild, but there is no provision for grandchild support. MCL 722.26c allows a court to grant a non-parent custody of a child, yet that non-parent has no corresponding duty of support. 2008 MCSF 4.01 does not require any support or offset of support from the non-parent. The third party's grant of parental rights does not lead to a corresponding duty to provide for the child's support.

MCL 722.27a(3) allows the termination of parenting time if the court finds clear and convincing evidence that parenting time would "endanger the child's physical, mental, or emotional health." There is no provision for conditioning the elimination of parenting time on the elimination of child support.

The Court should not judicially legislate the termination of child support as a matter of public policy. The Court of Appeals properly found that there was no public policy that would justify judicially legislating the automatic termination of child support

upon the termination of parental rights. The focus of child protective proceedings is the protection of the child, not whether the parent can or should continue to support the child. There is no provision for determining a parent's ability to pay, or whether the child can survive without that parent's financial support. Terminating a parent's support obligation is unrelated to protecting a child, and is generally contrary to the child's best interests.

Conditioning support on parental rights may also inhibit the reporting of child abuse and neglect, particularly by a parent dependent on support. The non-abusing parent would have to balance the harm to the child caused by the other parent's abuse against the harm to the child of not receiving any financial support from that parent.

Lastly, providing parents with a financial incentive to abuse or neglect their children would be dangerous to children. Many parents spend a lot of effort to evade their child support responsibilities. To avoid child support, some parents change jobs frequently, work only in the underground economy, or even attempt to intimidate the child support recipient into forgiving child support arrearages. The court should not create an avenue for avoiding child support that would provide an incentive for support payers to abuse their children.

A termination of parental rights does not determine whether the respondent has an ability to pay child support. Impoverishment is not a required element of abuse cases. Protective proceedings can be brought against doctors, lawyers and bank presidents. Even in cases of financial hardship, it does not appear that impoverished parents who do not neglect or abuse their children are in any better financial position than similarly impoverished parents who do abuse their children. The child support obligation should be based on ability to pay, not on whether the parent abuses their children or not.

The issue of whether terminations of parental rights are being sought in appropriate cases is not at issue in this case, and should not be addressed in this appeal.

Conclusion and Summary.

The court of appeals decision correctly stated the law, and properly refrained from judicially legislating a result that would offend public policy.

RELIEF REQUESTED

The Family Law Section of the State Bar of Michigan requests that this Court affirm the decision of the Court of Appeals and the trial court.

Respectfully submitted,

The Family Law Section
of the State Bar of Michigan

By: Kent Weichmann (P30891)

Date: September 24, 2010